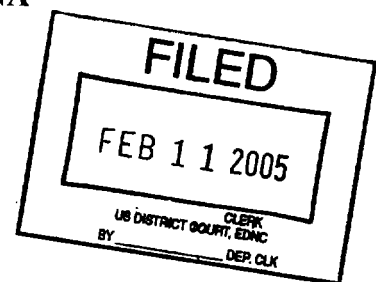


**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:05-CV-48 FL (1)**



RICHARD P. NORDAN, as Ancillary )  
Administrator for the separate Estates of )  
STEPHEN S. HELVENSTON, MIKE R. )  
TEAGUE, JERKO GERALD ZOVKO and )  
WESLEY J.K. BATALONA, )

Plaintiffs, )

v. )

BLACKWATER SECURITY )  
CONSULTING, LLC, a Delaware Limited )  
Liability Company; BLACKWATER )  
LODGE AND TRAINING CENTER, INC., )  
a Delaware Corporation, JUSTIN L. )  
MCQUOWN, an individual; and THOMAS )  
POWELL, an individual, )

Defendants. )

**AFFIDAVIT OF MARC P. MILES  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR REMAND**

**STATE OF CALIFORNIA**

Marc P. Miles, being first duly sworn upon oath states and alleges as follows:

1. I am an associate in the law firm of Callahan & Blaine, APLC, attorneys for the Plaintiff in the above-entitled action. My address is 3 Hutton Centre Drive, Suite 900, Santa Ana, California 92707. My telephone number is (714) 241-4444. I make and submit this Affidavit in support of the Plaintiff's Motion for Remand of the instant action back to the North Carolina Superior Court.

2. The following facts are stated from my personal knowledge.

3. I am the associate at Callahan & Blaine primarily responsible for working on the above-entitled action. Following the Defendants' removal of this matter to U.S. District Court, I conducted the legal research and drafted the Plaintiff's Motion for Remand and Memorandum of Law in support of Motion for Remand, which are filed concurrently herewith.

4. More specifically, in connection with drafting the Motion for Remand and Memorandum of Law in support thereof, I conducted detailed nationwide legal research concerning the following issues: (1) grounds for removal; (2) grounds for remand back to state court; (3) federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441; (4) legal authority concerning whether an anticipated defense can serve as the basis for federal subject matter jurisdiction; (5) the Congressional intent behind the Defense Base Act; (6) the Congressional intent behind the Longshore and Harbor Workers' Compensation Act ("LHWCA"); (7) legal authority concerning whether the Defense Base Act or LHWCA provide removal jurisdiction; (8) whether the Defense Base Act or the LHWCA "completely preempt" any and all state law claims; and (9) the recovery of attorneys fees under 28 U.S.C. §1447(c).

5. In addition to the extensive, nationwide legal research described above, I also personally drafted the Plaintiff's Motion for Remand, Memorandum of Law in Support of Motion for Remand, the Proposed Order, and this Affidavit.

5. To date, I have spent 35.9 hours in connection with researching and drafting the subject Motion for Remand and Memorandum of Law in support thereof. In addition, I reasonably anticipate that I will spend at least another 3.5 hours in connection with reviewing and analyzing the Defendants' opposition to the instant motion for remand, as well as an analysis of the legal authorities cited therein. Moreover, I reasonably anticipate spending an additional 5.5 hours conducting further legal research in response to the Defendants' opposition, and drafting

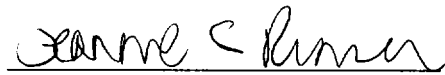
the Reply Brief.

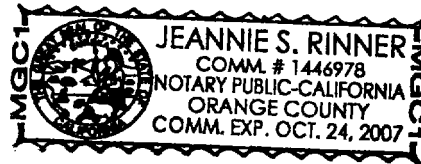
6. Based upon the amount of time I have spent to date in connection with the Motion for Remand, as well as the anticipated amount of time associated with the Defendants' opposition and the Plaintiff's reply brief, there will be *at least 44.9* hours spent on the instant Motion for Remand. My hourly rate at all times during this litigation has been \$270. As such, I respectfully request that this court remand the case back to state court, and award the Plaintiff attorney's fees in the amount of \$12,123, pursuant to 28 U.S.C. §1447(c).

FURTHER AFFIANT SAITH NAUGHT.

  
MARC P. MILES

Sworn to and subscribed before me  
This the 10 day of February, 2005

  
Notary Public



**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing **Affidavit of Marc P. Miles in Support of Plaintiff's Motion for Remand** in the above-entitled action on all of parties to this cause by depositing a copy, postage prepaid, in the United States Mail, addressed as follows:

Fred F. Fielding  
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This is 11 day of February, 2005.

  
\_\_\_\_\_  
David F. Kirby  
Kirby & Holt, L.L.P.